Supreme Court, U.S.
FILED
AUG 13 2007
OFFICE OF THE CLERK

No. 07-412

In The

SUPREME COURT OF THE UNITED STATES

PETER JOHN JONES,

Petitioner,

v.

THE STATE OF MINNESOTA,

Respondent.

On Petition for Writ of Certiorari
To: The Supreme Court of Minnesota.

Counsel for Petitioner:

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Questions for Review

Whether the State of Minnesota has jurisdiction to enforce its statute requiring registration of persons designated as "predatory offenders" against Indians who reside in Indian Country as either a "criminal/prohibitory" statute or as an "exceptional" circumstance?

Table of Contents and Authorities:

Not applicable.

Citations of Decisions:

State of Minnesota v. Peter John Jones, 729 N.W.2d 1 (Minn. 2007).

State of Minnesota v. Peter John Jones, 700 N.W.2d 556 (Minn. App. 2005).

Jurisdictional Statement:

(i) Judgment by Clerk of Appellate Courts Entered: May 14, 2007.

(ii) Subsequent Orders: None.

(iii) Jurisdiction pursuant to 28 U.S.C. 1257

Constitutional Provisions and Statutes:

18 U.S.C. Section 1162 (2000).

Minnesota Statute 243.166 (2003).

See Appendix.

Statement of the Case

Peter John Jones is an enrolled member of the Leech Lake Band of Chippewa Indians who resides on the Leech Lake Indian Reservation in Cass County, Minnesota. Jones is designated a "predatory offender" by Minn. Stat. 243.166 (Predatory Offender Registration Statute) by virtue of his prior conviction for kidnapping. Jones was charged with failure to register as a predatory offender for not complying with the registration requirements of the statute. At a pre-trial hearing, Jones moved the trial court to dismiss the charges for lack of subject matter jurisdiction on grounds the statute was civil/regulatory in nature and Minnesota lacked jurisdiction to prosecute him under Public Law 280.

The trial court agreed that Minnesota lacked jurisdiction and dismissed the charges. "Because Public Law 280 limits the State's general regulatory authority, the State lacks jurisdiction to impose criminal penalties on residents of Indian reservations for violations of predatory offender registration statutes." Trial Court Order, Appendix at. 7.

The State appealed to the Minnesota Court of Appeals which also found the Predatory Offender Registration Statute was civil/regulatory and Minnesota lacked jurisdiction under Public Law 280, 18 U.S.C. 1162.

The State petitioned the Minnesota Supreme Court for a writ of certiorari. The Minnesota Supreme Court granted the writ and issued a fragmented decision. The majority (three justices) ruled Minnesota had jurisdiction because the Predatory Offender Registration Statute was criminal prohibitory. The concurrence (two justices) ruled Minnesota had jurisdiction because the Predatory Offender Registration Statute invoked "exceptional circumstances" outside of the Public Law 280 express grant of jurisdiction. The minority opined that Public Law 280 did apply, the Predatory Offender Registration Statute was civil/regulatory and Minnesota lacked jurisdiction.

ARGUMENT

The Minnesota Supreme Court's decided an important question of federal law that has not been, but should be decided by this Court. The controlling concurrence found Minnesota had jurisdiction due to the existence of "exceptional circumstances" but specifically recognized that "The Supreme Court has offered no guidance into which cases are "exceptional". *State v. Jones*, 728 N.W. 1, 12 (Minn. 2007). While there is a state interest in tracking people who have been convicted of predatory crimes in order to investigate other possible offenses, this must be balanced against an individual's right to privacy and not be obligated under threat of imprisonment to report his or her residence to law enforcement authorities. Furthermore the Adam Walsh Act, 42 U.S.C. 16901-16991, addresses this "exceptional circumstance" and creates federal penalties for failure to register by predatory offenders. This eliminates any critical need for the states to intervene in tribal sovereignty in these matters.

This case also implicates the important question under *California v. Cabezon Band of Mission Indians*, 480 U.S. 202 (1987) in determining what offenses are civil/regulatory versus criminal/prohibitory in nature within the issues of interpreting federal Indian law. States pass more and more laws each year creating new criminal penalties for both acts and omissions. This case involves a felony prosecution for a person failing to register his address with the State, even though Jones was under no form of probation or court ordered supervision. The current state of the law for enforcement of these types of statutes in Indian country is muddled, as demonstrated by a wildly split Minnesota Supreme Court which could not agree if the statue was civil or criminal in nature, and the swing votes dodged the issue entirely finding a results-oriented ground to reach a decision.

This decision by the Minnesota Supreme Court affects issues of state jurisdiction versus the sovereignty of the Indian tribes well beyond Jones' alleged failure to report his whereabouts to the local state authorities. If states are given permission to encroach on tribal sovereignty beyond that explicitly granted by the federal government whenever they determine an "exceptional" circumstance exists, states will undoubtedly make more and more "exceptional" mountains by legislatively redesignating mundane molehills. This unintended consequence must be stopped through the Court issuing clear instructions on the difference between civil and criminal jurisdiction in Public Law 280 states while providing a "bright line" test on "exceptional" circumstances that permit state action.

APPENDIX

A separate appendix will be filed.

Dated this 13th day of August, 2007.

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